

Joseph Horne

#V-84328

K.V.S.D.

P.O. BOX-5102

Delano, CA 93216

FILED
JUL 28 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF
CALIFORNIA.

~~Petitioner~~
Joseph Horne

VS.

Robert Horrel Warden

Case # 4:07-CV-04592-SBA

"Default of
Judgement"

pc
I, Joseph Horne, hereby
submit motion for "Default of
Judgement". This is filed against
the responding party to the
writ of Habeas corpus currently
filed in the District Court.

Specifically case under number
4:07-CV-04592-SBA.

On the date of March 24th 2008
the Honorable Judge Sandra
Brown Armstrong issued an
order directing respondent to
show cause why the petition
should not be granted.

It was set forth in this
order that was served upon

both parties that the respondent had 120 days to respond and or file for an extension within 10 days of order deadline (please view attached order).

As of the date of July 24th 2008 at approximately 4:30 p.m.

petitioner has yet received an answer by the respondent.

Today is the 24th of July 2008 exactly 122 days after the order by the Honorable Judge was issued, which places the respondent in violation of the ordered deadline.

Respondant has failed to respond to the above case, by ordered deadlines. Thus, petitioner respectfully request that the Honorable Judge grants a "default of judgement", thereby writ of Habeas corpus as to all grounds submitted should be granted.

I declare under penalty of perjury the foregoing is true and correct.

Executed at Delano, CA
on 7/24/08


JOSEPH HORNE
petitioner.

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E-FILED

IN THE UNITED STATES DISTRICT COURT

MAR 24 2008

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

JOSEPH DEONN. HORNE,

No. C 07-4592 SBA (PR)

Petitioner,

v.

ROBERT HOREL, Warden,

Respondent.

**ORDER GRANTING IN FORMA
PAUPERIS STATUS AND DIRECTING
RESPONDENT TO SHOW CAUSE WHY
THE PETITION SHOULD NOT BE
GRANTED**

(Docket nos. 2, 10)

#12

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner also seeks leave to proceed in forma pauperis. It does not appear from the face of the petition that it is without merit.

On February 28, 2008, Petitioner filed a notice of appeal and a motion for a certificate of appealability (COA). Unless a circuit justice or judge issues a COA, an appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court. 28 U.S.C. § 2253(c)(1). Petitioner states that he is attempting to appeal "the non-judgment of the District Court Hon. Judge Sandra Brown Armstrong refusing to or just simply not responding to [the] above entitled federal writ of habeas corpus case." Petitioner is not appealing a final order by the Court. Accordingly, his application for a COA is DENIED. Further, Petitioner's attempt to appeal does not deprive this Court of jurisdiction to enter its order in the case.

Good cause appearing, the Court hereby issues the following orders:

1. Petitioner's application to proceed in forma pauperis (docket no. 2) is GRANTED.
2. The Clerk of the Court shall serve a copy of this Order and the petition and all attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this Order on Petitioner at his current address.
3. Respondent shall file with this Court and serve upon Petitioner, within one-hundred and twenty (120) days of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not

1 be issued. Respondent shall file with the Answer a copy of all portions of the relevant state records
2 that have been transcribed previously and that are relevant to a determination of the issues presented
3 by the petition.

4 4. If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with
5 the Court and serving it on Respondent within **sixty (60) days** of his receipt of the Answer. Should
6 Petitioner fail to do so, the petition will be deemed submitted and ready for decision **sixty (60) days**
7 after the date Petitioner is served with Respondent's Answer.

8 5. Respondent may file a motion to dismiss on procedural grounds in lieu of an Answer,
9 as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.
10 If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an
11 opposition or statement of non-opposition to the motion within **sixty (60) days** of receipt of the
12 motion, and Respondent shall file with the Court and serve on Petitioner a reply within **fifteen (15)**
13 days of receipt of any opposition.

14 6. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court
15 and Respondent informed of any change of address and must comply with the Court's orders in a
16 timely fashion. Petitioner must also serve on Respondent's counsel all communications with the
17 Court by mailing a true copy of the document to Respondent's counsel.

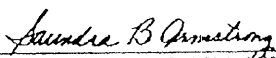
18 7. Extensions of time are not favored, though reasonable extensions will be granted.
19 Any motion for an extension of time must be filed no later than **ten (10) days** prior to the deadline
20 sought to be extended.

21 8. Petitioner's application for a COA (docket no. 10) is DENIED. The Clerk of the
22 Court shall transmit the file, including a copy of this Order, to the Court of Appeals. See Fed. R.
23 App. P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

24 9. This Order terminates Docket nos. 2 and 10.

25 IT IS SO ORDERED.

26 DATED: 3/20/08

27 
28 SAUNDRA BROWN ARMSTRONG
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 JOSEPH D. HORNE,

5 Plaintiff,

6 v.

7 ROBERT HOREL et al,

8 Defendant.

Case Number: CV07-04592 SBA

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on March 24, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Joseph Deonn Horne V-84328
16 Kern Valley State Prison
17 P.O. Box 5102
18 Delano, CA 93216

19 Dated: March 24, 2008

20 Richard W. Wieking, Clerk
21 By: LISA R CLARK, Deputy Clerk
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Plaintiff's name:

Joseph Horne
Petitioner.
vs.

Case Number: 4:07-cv-04592-SBA

Defendant's name:

Robert Horne
Warden.

PROOF OF SERVICE

I, the undersigned, hereby certify that I am over the age of eighteen years and a party to the above-entitled action.

On July 24th, 20 08, I served a copy of Joseph Horne

by

placing said copy in a postage paid envelope addressed to the person hereinafter listed, by
depositing said envelope in the United States Mail: office of the clerk U.S.
District Court Northern
District of California


(LIST ALL DEFENDANTS SERVED IN THIS ACTION)

1301-day St. #4008
Oakland, CA 94612-5212

Robert Horne
Warden.

Attorney General of
California.

I declare under penalty of perjury that the foregoing is true and correct.


(Signed)